IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1438 OF 2003

Suresh Laxman Naik,
Age 27 years,
residing at Kandale Adiwasi Wadi,
Taluka Pen, District Raigad. ..Appellant.
(Appellant is in jail) (org.accused)

V/s.

The State of Maharashtra. ..Respondent.

Mrs.Pranali Kakade, advocate appointed for final hearing, for Appellant.

Mr.Y.S.Shinde, APP for Respondent-State.

CORAM: A.M.KHANWILKAR,J

DATE : SEPTEMBER 21, 2006.

ORAL JUDGMENT :

1. This appeal takes exception to the Judgment and Order passed by the Second Adhoc Additional Sessions Judge, Raigad dated 14th November, 2002 in Sessions Case No.85 of 2002. The appellant was chargesheeted and tried for the offence punishable under section 459 r/w 34 of I.P.Code for committing offence of lurking, house breaking and theft and causing grievous hurt to complainant and his son Abhishekh by means of sharp weapon screw-driver and also under Section 506 I.P.Code for committing criminal intimidation by threatening the complainant and his son to kill.

2. The prosecution has examined in all seven witnesses to establish the guilt of the appellant. On analysing the evidence of the concerned prosecution witnesses, in particular P.W.1,3,5 and 6, who are the eye-witnesses and complainant-being injured witness, the trial Court proceeded to accept their evidence as natural, reliable and trustworthy. On the basis of that evidence, complicity of the appellant having been established, the trial Court proceeded to record finding of guilt against the appellant for offence punishable under section 459 of I.P.Code and ordered the appellant to suffer R.I. for four years and to pay fine of Rs.2,000/-, in default to suffer S.I. for two months. The appellant is acquitted of the other charges. The State has not challenged that finding recorded by the trial court in favour of the appellant. This appeal was presented through jail when the appellant was undergoing sentence of rigorous imprisonment for four years for the offence in question. The appellant has already completed the sentence period as the appellant was in custody from 13th May, 2002 from the time of arrest on the spot on the date of incident. The appellant, obviously, must have earned some remission as well. Suffice it to observe that the

appellant has already undergone sentence period ordered by the trial Court. On this basis itself, the appeal could have been disposed of by this Court as nothing survives for consideration.

3. However, as the advocate appearing for the appellant being appointed advocate had no instruction to make statement on behalf of the appellant, accordingly, the appeal was heard on merits. After going through the record and Judgment of the trial Court, in my opinion, no fault can be found with the conclusion reached by the trial Court with regard to the finding of guilt for offence under section 459 of I.P.Code. This is so because there is direct evidence regarding the complicity of the appellant in the incident in question. The prosecution has established the case on the basis of evidence of eye-witnesses, including the injured witness-complainant. The version given by these witnesses have gone unchallenged. The trial Court has extensively analysed the evidence of each witness to hold that the witnesses are truthful and reliable. That opinion of the trial Court is a possible view. I am in agreement with that view. As it is a possible view, question of reversing finding of guilt does not arise.

4. Counsel for the appellant however, primarily made two submissions before this court. First submission is that, the prosecution case becomes doubtful on account of non-recovery of mud-stained clothes of the accused. This aspect has been considered and rightly rejected by the trial Court. The fact remains that the appellant has been accosted on the spot by the prosecution witnesses including the injured witness. After the appellant was accosted, he was given in the custody of the police. The prosecution witnesses have deposed about the act committed by the appellant to indicate his complicity in the commission of the crime. That evidence being trustworthy, the fact that mudstained clothes are not recovered, will not weaken the prosecution case, much less to give benefit of doubt or acquit the appellant accused.

5. It was next contended on behalf of the appellant that the entire stolen amount has not been recovered. The total amount stolen as per the prosecution case is in the sum of Rs.3350/-, whereas seizure panchanama only refers to 12 number of notes in the denomination of Rs.10/- and vaguely mentions that remaining amount was in the denomination of

Rs.50/-. Once again this argument is devoid of merit. This is so because the appellant has been accosted on the spot by the prosecution witnesses. As the direct evidence has remained unchallenged and unshaken on such peripheral issues, the appellant cannot be acquitted or given benefit of doubt, as is sought to be contended. In any case, prosecution evidence clearly mentions that 12 notes in the denomination of Rs.10/- were recovered and in addition notes of the denomination of Rs.50/-. There is no challenge to this version of the prosecution. There is no cross-examination on this aspect. As the version given by the prosecution witnesses about the recovery of stolen amount has remained unchallenged, there is no reason to depart from the conclusion reached by the trial Court in convicting the appellant for the offence under section 459 of I.P.Code. Hence this appeal should fail being devoid of merits. Accordingly, dismissed.

6. Court expresses word of gratitude to the advocate for having appeared as amicus curiae and given able assistance to espouse the cause of the appellant.

7. As this appeal is filed through jail, copy of

this order be forwarded to the the appellant/accused.